

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NUSF-4
on its own motion, seeking to)
determine the level of the fund)
necessary to carry out the) PROGRESSION ORDER #5
Nebraska Telecommunications)
Universal Service Fund Act)
beginning July 1, 2000.) Entered May 10, 2000

BY THE COMMISSION:

1. On March 11, 1999, the Nebraska State Legislature passed Legislative Bill 514, which was subsequently signed into law by the Governor on March 18, 1999. This legislative bill, titled the Nebraska Telecommunications Universal Service Fund Act, is codified in sections 86-1401 through 86-1410 of the Nebraska Revised Statutes.

2. On March 16, 1999, the Nebraska Public Service Commission (hereinafter, the "Commission") entered an Order Initiating Docket and Seeking Comment in Application No. NUSF-1 in which the Commission defined the services that would be subject to the Nebraska Universal Service Fund (hereinafter, the "NUSF") surcharge.

3. At that time, the Commission also sought comment on whether any modifications to the list of services subject to the NUSF surcharge should be made in the future. Comments were originally due on May 17, 1999, and reply comments were due on June 17, 1999. On May 17, 1999, the comment and reply comment due dates were extended until June 16, 1999, and July 19, 1999, respectively.

4. In Progression Order #7 in this matter the Commission tentatively concluded that all distance learning services are telecommunication services and should be subject to the NUSF surcharge, without regard to the type of network over which such services are provided, and that a de-minimis exemption is no longer warranted and all providers of intrastate retail telecommunications services should bill, collect, and remit the NUSF surcharge, effective July 1, 2000. The Commission held a public hearing on these issues April 12, 2000, at 10:00 a.m. in the Commission Hearing Room. Notice of this public hearing was sent to all interested parties on March 30, 2000.

O P I N I O N S A N D F I N D I N G S

A. Distance Learning Services

5. In Docket No. C-1485, the Commission determined that the interactive two-way video and audio services offered by Galaxy Telecom, L.P. (hereinafter, "Galaxy") constitute telecommunications services under applicable federal and state law. Said services were to be used to provide education distance learning services to schools and other customers. The Commission further determined

that said service did not constitute basic local exchange service but was rather interexchange services. The Commission made identical findings in Docket No. C-1635 relative to the request of F & S Fiber Systems, L.L.C. (hereinafter, "F & S Fiber") to provide similar services.

6. At the April 12, 2000, hearing in this matter, testimony was received from John Horvath, with the Tri-Valley Distance Learning Consortium (hereinafter, Tri-Valley). Mr. Horvath testified that the distance learning services are provided to Tri-Valley by F & S Fiber. Mr. Hovarth further testified that he felt the distance learning services provided to Tri-Valley by F & S Fiber are essentially cable services.

7. However, the Commission has examined the matter of distance learning services provided over cable systems in great detail. The Commission continues to believe that the two-way nature of distance learning services clearly separates it from traditional one-way cable services. The Commission reaffirms the findings set forth in Docket No. C-1485, that distance learning services provided over cable networks constitute telecommunications services.

8. Galaxy, in a letter dated January 14, 2000, and Mr. Horvath, in his testimony, point out that distance learning services are exempt from federal universal service contribution requirements. The Federal Communication Commission exempts schools and certain other entities from federal universal service charges on the basis that it would be counter-productive to require contributions from entities that receive federal universal service support. However, the NUSF does not provide direct support to schools. Moreover, an exemption from the NUSF surcharge for entities that receive benefit from NUSF support would effectively exempt all subscribers outside of the Omaha and Lincoln metro areas. Such a result would clearly result in an inequitable burden on the remaining subscribers and would violate the equitable and non-discriminatory requirements regarding universal service in both federal and state law.

9. Both federal⁽¹⁾ and state law⁽²⁾ require that all telecommunication providers contribute on an equitable and non-discriminatory basis to the NUSF. Given the Commission's previous determination that the distance learning services provided over cable systems are telecommunications services, the Commission finds that distance learning services provided over cable networks are subject to the NUSF surcharge. Companies shall begin billing, collecting, and remitting the NUSF surcharge on such services beginning July 1, 2000, in accordance with Commission orders.

10. Galaxy indicated that it was unclear on what row of the NUSF remittance worksheet should distance learning revenues be shown. Given that the Commission has determined such services to be interexchange, distance learning revenue should be shown on the "Intrastate Toll Private Line" row of the NUSF remittance worksheet.

B. NUSF De-Minimis Exemption

11. The Commission, on its own motion, adopted a de-minimis exemption for carriers whose monthly remittances were less than \$100 per month. Jeffrey L. Pursley, Director of the NUSF, testified that the de-minimis exemption was originally adopted by the Commission because the NUSF surcharge was being assessed on coin revenues. Mr. Pursley stated that requiring small businesses that provided a minimal number of payphones for the convenience of their customers, to bill, collect, and remit the NUSF surcharge would be unduly burdensome. However, since the Commission recently exempted coin revenues from the NUSF surcharge in favor of assessing the surcharge on the basic local exchange services provided to the payphone owner, Mr. Pursley indicated that the compelling public policy reason for the de-minimis exemption no longer exists. The requirement to bill, collect, and remit the NUSF surcharge is now placed only on companies in the direct business of providing telecommunications services. Further, eliminating the de-minimis exemption is consistent with federal and state law requiring all providers of telecommunications services to contribute to universal services in an equitable and non-discriminatory manner.

12. Mr. Pursley also recommended that companies whose annual assessable revenue is estimated to be less than \$20,000 per year be allowed to remit to the NUSF on an annual basis, in order to minimize any burden placed on a small telecommunication provider. The Commission believes that allowing companies to remit on a quarterly basis will be a more orderly process for companies and would reduce the amount of lost interest income to the NUSF.

13. Therefore, the Commission finds that for the foregoing reasons a de-minimis exemption is no longer warranted and shall be eliminated effective July 1, 2000. Companies subject to the NUSF surcharge whose assessable revenues are estimate to be less than \$20,000 in a fiscal year, can choose to remit on a quarterly basis. Companies should indicate this choice in the provided place on the NUSF remittance worksheet. Companies that choose to remit on a quarterly basis, shall bill and collect the NUSF surcharge on a monthly basis or whenever bills are sent to customers.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that distance learning services provided over cable systems are telecommunications services and carriers providing such services shall bill, collect, and remit the NUSF surcharge on such services beginning July 1, 2000.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that a de-minimis exemption is no longer warranted. All providers of telecommunications services shall bill, collect, and remit the NUSF surcharge beginning July 1, 2000.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of May,

2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

Attest

Executive Director

1. See 47 U.S.C. 254 § 254(f).
2. See Nebraska Revised Statutes § 86-1404(4).

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